

## SISKIND'S IMMIGRATION BULLETIN

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## **1. A MESSAGE FROM SISKIND, SUSSER, HAAS & DEVINE**

**Dear Readers:**

**Happy Thanksgiving to all of our readers in the United States. We at Siskind, Susser, Haas & Devine have much to be thankful for this year especially the tremendous loyalty of our newsletter readers worldwide. We owe our firm's success to you and hope we can continue to repay this debt by providing an ever-improving array of immigration publications and features. Again, thank you.**

**This time of year is normally quiet for immigration advocates. We would normally expect Congress to be out of session. We would normally expect to know who our next President would be and be waiting until January to see the changes brought by the election. Who knew that nothing would be settled?**

**Congress did not finish its work on a federal budget before the election and will be returning to work on December 5<sup>th</sup>. The question of whether the Latino Immigration Fairness Act ("LIFA") will be covered in a budget bill is still far from clear. And not knowing who the next President will be affects the politics of immigration. Some believe a Bush win might actually help if Bush believes he needs to reach out to Hispanic voters. He might be inclined to signal his support LIFA and this would be a major boost to the bill's chances. Gore would no doubt support the bill as well, but a hostile Republican Congress will probably be in no mood to make a deal with him. Nevertheless, President Clinton still has the power to veto a budget bill and Republicans worried about a government shutdown may back down and support LIFA. When there is any news on LIFA, we will immediately notify readers.**

**There is major news this week on amnesty litigation. Litigants in the CSS case won a major victory in the courts this week and hundreds of thousands of individuals may be affected. We report on the case this week.**

**This week we also have many of our regular features including Border News, News from the Courts, Legislative Update, News Bytes and an ABCs of Immigration article on labor certifications.**

**And finally, as always, we remind readers that this newsletter is published by Siskind, Susser, Haas & Devine, a law firm that represents clients throughout North America. If you are interested in scheduling a telephone consultation to discuss immigration questions you may have or to discuss the possibility of Siskind, Susser, Haas & Devine handling your immigration case, please go to <http://www.visalaw.com/intake.html>.**

In most cases, we are able to schedule a consultation within two days and we can often accommodate evening and weekend appointments.

Thanks again for your continued loyalty -

Greg Siskind

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## 2. LEGISLATIVE UPDATE

Congress will not meet again until December 5. They will be returning for a lame duck session in which five budget bills must be passed. Many will remember that before the adjournment at the end of October, one of the main points of contention was the inclusion of immigration provisions in the budget. Jake Siewert, the White House spokesperson has said that the Clinton Administration will continue to push the immigration issues.

Advocates will also be urging the Senate to approve H.R. 5062, which passed the House unanimously two months ago. This bill would eliminate the retroactive application of the expanded definition of aggravated felonies, meaning that many people who committed minor crimes in the past will no longer face deportation.

Although Congress is not officially in session, some business, including the introduction of bills, has continued. The following immigration related bill was recently introduced:

[H.R. 5625](#), introduced by Rep. Christopher Cox (R-CA), would create a pilot program within the H-1B visa program. Employers who are willing to make annual scholarship contributions to institutions of higher education would have the visa holder exempted from the annual cap. The scholarship amount would be equal to a Pell Grant, which last year was \$3,000. Employers would also benefit from a provision requiring the INS to adjudicate petitions within 30 days. The pilot program would run from 2001 through 2003. At this point, the odds are very much against the bill passing, but its introduction may signal Congress's willingness to address the possibility of such a program in the future.

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## 3. FEDERAL COURT ALLOWS 1986 AMNESTY LITIGATION TO PROCEED

Catholic Social Services v. INS, Ninth Circuit

**In this case, the court allowed a class action suit relating to the 1986 amnesty to proceed.**

**In 1986, Congress passed the Immigration Reform and Control Act (IRCA). This law granted amnesty to undocumented aliens in the US who could show that they had been in the US since 1982 except for “brief, casual, and innocent absences.” There was a one-year period to apply for benefits under IRCA, between May 5, 1987 and May 5, 1988. In November 1986, the INS issued an interpretation of the “brief, casual, and innocent” absence. Under it, anyone who left the US after November 6, 1986 without obtaining advance parole was not eligible for adjustment of status under IRCA.**

**As soon as the INS announced this position, a lawsuit challenging it was filed. It was certified as a class action encompassing all persons eligible for legalization under IRCA who left the US without advance parole. The court found that the INS interpretation was inconsistent with the law and issued several remedial orders. Among these was that the INS extend the application period until November 1988. The INS appealed, not on the merits, but based on the remedial orders. The court was affirmed, and the INS appealed to the US Supreme Court. The Supreme Court found that the case was not “ripe,” a legal term meaning that the situation was not sufficiently developed for there to be a real dispute before the court.**

**In response, the plaintiffs amended their complaint to add specific plaintiffs whose applications for legalization were rejected because of the physical presence requirement, as well as plaintiffs who did not make an application because of it. The district court found that it had jurisdiction and issued remedial orders similar to those it first issued. The INS appealed.**

**While the appeal was pending, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA). Section 377 of the IIRAIRA eliminated federal court jurisdiction of claims related to the physical presence unless the person suing actually did file or attempted to file an application. Based on this law, in 1998 the Ninth Circuit reversed the trial court and ordered the trial court to dismiss the case.**

**Shortly after the dismissal, the plaintiffs filed another case, clearly specifying that members of the class included people who met the requirements in section 377. The district court certified a class composed of people who were eligible for legalization but whose applications were rejected because of travel outside the US after November 6, 1988. The INS argued that the court could not hear the case because of the expiration of the statute of limitations. The statute of limitations in actions against the government is six years. The district court allowed the case to go forward, the case was appealed to the Ninth Circuit.**

The Ninth Circuit first noted that it should not have ordered the case dismissed, but instead should have given the plaintiffs an opportunity to amend their complaint. It was this action that made the statute of limitations an issue. The court found that the statute of limitations had been tolled during the first case, based on principles announced the two Supreme Court cases. The purpose of statutes of limitations is to promote fairness by requiring actions be brought when memories of them are fresh, and evidence is still available. The purpose of class actions is to promote efficiency by litigating similar claims in one case. In addressing a case filed by an individual plaintiff after the dismissal of a similar class action lawsuit after the statute of limitations had passed, the Supreme Court allowed the case to go forward, finding that the “commencement of a class action suspends the applicable statute of limitations” for subsequent actions by people who could have been members of the class. Under this principle, it is clear that if the members of the current class had filed their claims individually rather than as a class, they would be allowed to proceed. The Ninth Circuit found that this principle encompassed the present case, and ruled that it was not barred by the statute of limitations.

The court then addressed the remedial orders the district court had issued. It first had to address the jurisdiction stripping provisions of the IIRAIRA, and found that none of them prevented the court from hearing the case nor did they prevent the district court from issuing remedial orders. The district court had issued an order prohibiting the INS from deporting any class members, and declined to issue an order allowing the plaintiffs to litigate the issue of whether IIRAIRA section 337 violated equal protection because of the Ninth Circuit’s previous dismissal of the case.

The Ninth Circuit upheld the order preventing the INS from initiating deportation proceedings. The court reversed the district court’s decision that it could not address the equal protection issue. In its decision to dismiss the case based on section 337, the Ninth Circuit did not address the equal protection argument, finding only that the plaintiffs were prevented from pursuing their case because of it. Because the issue had not been previously litigated, the Ninth Circuit now ruled that the plaintiffs could make the equal protection argument before the district court.

The opinion is available online at <http://laws.findlaw.com/9th/9816269.html>.

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#### 4. ELIAN GONZALEZ, ONE YEAR LATER

As Americans sat down to Thanksgiving this year, many remembered that it was one year ago that six-year-old Elian Gonzalez arrived in the US setting off one of the largest custody battles ever seen and making US

asylum policies a topic of everyday conversation.

His mother and many others died after the boat they were in capsized, and Elian was rescued by fishermen after drifting in an inner tube for almost two days. He was released into the custody of his great-uncle, Lazaro Gonzalez, who quickly made clear his desire that Elian not be returned to Cuba. His father, Juan Miguel Gonzalez, was equally clear in his desire that Elian be returned to him.

Almost overnight the family dispute became a political firestorm. Cuban officials denounced US immigration policies, saying that they encouraged risky trips like the one Elian was involved in. US politicians seized the opportunity to denounce Fidel Castro, and anti-Castro activists in the US made Elian a symbol of their struggle. For months crowds surrounded the house in Miami where he was living, and the story was news everyday.

Juan Miguel Gonzalez came to the US to take custody of his son, but the Miami family refused to meet with him. Elian was eventually reunited with his father after an INS raid on the Miami home where Elian was removed. The pictures from this event, with armed INS agents and a clearly frightened little boy, resulted in widespread disapproval, even from those who supported the INS position.

The INS decided that Elian could not seek asylum without the assistance of a parent or legal guardian, and it rejected the applications filed on his behalf. Eventually, the Eleventh Circuit Court of Appeals upheld the decision, and Elian returned to Cuba with his father.

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## 5. FORMER DIRECTOR OF AMERICAN INSTITUTE IN TAIWAN SUES OVER VISA FEE MISAPPROPRIATION

A former director of the American Institute in Taiwan (AIT) has filed a whistleblower lawsuit in which he accuses employees there of selling US visas and keeping the fees. James C. Wood, who was the AIT director from 1996 to 1997, says that more than \$5 million in visa fees are missing, and uses an audit from a private accounting firm to support his claim. The audit showed that visa fees were not kept separate, as required by the State Department, but were mixed with other income. According to the audit, there were \$9.3 million in visa fees collected between 1992 and 1995, for which \$5.3 million cannot be accounted.

The suit, which was filed in October, alleges that AIT officers sold visas to ineligible recipients, at a cost of up to \$25,000. The proper visa fee is \$10. It also alleges that some officers demanded sex from female applicants,

and threatened to deny issuing visas to qualified applicants unless they agreed. The suit seeks the repayment of the missing funds and damages for what Wood says are “false statements” that were made in an effort to force him to resign.

Wood ordered the audit shortly after becoming the director. He says that this is when the problems first began. AIT employees refused to turn over financial records to the auditors, telling them that they had been “eaten by termites.”

The AIT is not an official US Consulate. The US and Chinese governments have an agreement that the US will not officially recognize Taiwan. AIT is a private, non-profit agency that has a contract with the State Department to process visa applications, as well as conduct trade and commercial functions that a consulate would perform. Despite its non-official status, the State and Justice Departments have filed motions to dismiss the case. They argue that AIT is essentially a government agency and enjoys immunity from lawsuits. Wood has countered this effort by pointing out that if the agency enjoys immunity, then it is essentially a US government entity, and is therefore in violation of the agreement that the US will not recognize Taiwan.

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## **6. FEDERAL AGENCIES INVESTIGATE POSSIBILITY THAT MONEY SENT BY IMMIGRANTS TO SOMALIA IS USED FOR WEAPONS**

For years Somali refugees in the US have wired money home, with amounts reaching into the millions of dollars. Now federal officials have begun an investigation into this to determine whether any of the money is being used to buy weapons. Some Somalis have reported that there is pressure to contribute to an organized collection system that provides money for weapons for militia groups.

Most money sent to Somalia goes to family members who have not been able to leave the country, which has been in a state of war since the early 1990s. Such humanitarian purposes are completely legal. However, if a person knows that their money will be used to buy weapons, that is against the law.

About \$75 million has been sent to Somalia from the US over the past four years, and their fund raising efforts are much more organized than other immigrant groups. There are two primary reasons for this: first, a strong sense of family, and second, Somalia has long been a country without any social safety net.

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## **7. COURT RULING MAY EFFECT FUTURE NONIMMIGRANT NURSES**

### **Beverly Enterprises, Inc. v. Herman, District of Columbia**

In this case, the court ruled that a Department of Labor regulation dealing with the H-1A program for nonimmigrant nurses was not supported by the statute.

In January 1998 Beverly Enterprises, a health care facility operator, sued the US Department of Labor (DOL) seeking to have regulations relating to the H-1A visa for nurses repealed. While the H-1A program expired in 1995, employer obligations under it continue as long as there are unexpired H-1A visas. Also, while the program was recently specifically repealed, it was replaced with the H-1C visa, which has many of the same requirements.

The H-1A law, the Immigrant Nursing Relief Act of 1989 (INRA) included six attestation provisions, two of which related to wages. One required the employer to attest that employment of the alien nurse would not adversely affect the wages or working conditions of US nurses. The other required the alien nurses to be paid at the same wage rate as US nurses employed by the facility. The DOL regulations expanded on these requirements. Under the regulations, alien nurses must be paid either the prevailing wage, or if it was higher, the wage paid to similarly employed nurses at the facility, but the alien nurse had to be paid the higher of the two wages. After a DOL investigation that resulted in a \$4 million fine, Beverly Enterprises sued, claiming that the DOL regulation was not supported by the (INRA). According to Beverly Enterprises, the INRA required only that an alien nurse be paid the facility wage, and not the prevailing wage, even if it was higher.

The court first set forth the standard of review. Because the case involves a challenge to federal agency interpretation of a law it is entrusted with enforcing, the standard of review is that set forth in a Supreme Court case commonly known as Chevron. Under this case, the court is to determine whether Congress directly addressed the issue. If the intent of Congress is clear, the agency rule must yield. If Congress was silent or ambiguous on the issue, the court must determine whether the agency rule is a “permissible construction” of the statute. Beverly Enterprises argued that Congress’ intent was clear, and that even if it was not, the DOL regulation was not permissible. The DOL, of course, argued that Congress was not clear, and that the regulation was a permissible construction.

The court found that the plain language of the INRA precluded the interpretation advanced by the DOL. According to the court, the attestation requiring alien nurses to be paid the same wage as similarly employed

nurses at the facility was clear and unambiguous. The statute provided that “the alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.” Not only is this statute clear, at about the same time the INRA was passed, Congress made extensive changes to the H-1B provisions, one of which was to require the alien be paid the facility wage or the prevailing wage, whichever was higher, indicating that Congress knew how to write a law requiring the payment of the higher of two wages. The court further supported its opinion by noting that before it was passed, a section requiring payment of the prevailing wage was eliminated from the INRA.

Because Congress was clear in requiring alien nurses to be paid the wages of similarly employed nurses at a facility, the DOL regulation was rejected.

The opinion is available online through Lexis at 2000 U.S. Dist. LEXIS 16369.

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## 8. BORDER NEWS

The US Border Patrol and the Mexican border enforcement agency, Beta Grupo, have been conducting ongoing bilateral efforts to prevent deaths among border crossers since last year. A new training program has been implemented that focuses on rescues in mountainous terrain. Another part of the effort is a joint advertising campaign aimed at encouraging migrants to avoid dangerous areas. Rescue training for desert areas is scheduled for next year.

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The US Embassy in Managua, Nicaragua has requested the Nicaraguan government to begin requiring entry visas from people whose ultimate destination is the US. According to the Embassy, it is requesting the measure as a method of stopping alien smuggling. Thus far, there has been no official response from the Nicaraguan government.

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Last week the INS conducted a two-day sting operation in Florida, called Operation Home Run, aimed at uncovering human rights violators from other countries in the US. As a result of the operation, 14 people were arrested. The arrested individuals were from Haiti, Angola, and Peru and were all in the US without authorization. Most of those arrested were members of military or paramilitary organizations in their home country. Most have also confessed to their offenses, which in some cases involved

rape and torture. Under the 1996 immigration law, people accused of human rights violations after 1996 can be prosecuted in the US, but those whose crimes occurred before 1996 must be deported and face trial in their home country.

\*\*\*\*\*

A Border Patrol agent was indicted this week on charged of with violating the civil rights of an undocumented immigrant who he allegedly beat with a flashlight. While few facts about the case have been made public, the indictment claims that the agent, David Sipe, beat the immigrant while attempting to detain a group of border crossers along the Rio Grande in Texas. If convicted, Sipe faces up to 10 years in prison and a fine of \$250,000.

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The INS says it has disrupted a smuggling ring believed to be responsible for the smuggling of hundreds of South Koreans across the Canadian border with the US. According to recently filed court documents, the smugglers would charge about \$5,000 to transport a person from Seoul to Vancouver and then into the US. The person believed to be the leader, a native of South Korea and naturalized Canadian citizen, is in detention following the issuance of a four count indictment against him. The indictment is the result of an investigation that began in April 1999 after the Royal Canadian Mounted Police stopped a vehicle in an area known for smuggling and alerted the Border Patrol to a possible smuggling ring.

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## 9. NEWS FROM THE COURTS

### Richards-Diaz v. Fasano, Ninth Circuit

In this case, the court ruled that the elimination of waivers of deportation could be applied retroactively.

On February 21, 1996, Richards-Diaz, a lawful permanent resident, was sentenced to 180 days in prison for drug possession. On June 20, 1997, the INS started deportation proceedings on the ground that Richards had been convicted of an aggravated felony. An Immigration Judge found he was deportable and that he was not eligible for a waiver of deportation under section 212(c) of the Immigration and Nationality Act. This decision was upheld by the Board of Immigration Appeals. Richards then filed a petition for a writ of habeas corpus with a federal district court. The petition was denied and Richards appealed to the Ninth Circuit.

**Before 1996, when the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) were passed, many aliens were eligible for a waiver of deportation under section 212(c). Only those who were convicted of an aggravated felony and sentenced to at least five years in prison were ineligible. The AEDPA made anyone convicted of an aggravated felony ineligible for a waiver if they were sentenced to at least one year in prison. The IIRAIRA eliminated the waiver and replaced it with cancellation of removal, for which no one convicted of an aggravated felony is eligible.**

**Before the Ninth Circuit, Richards argued that the repeal of section 212(c) was impermissible as the INS was applying it to him. The Ninth Circuit has already addressed the retroactive application of the new definition of aggravated felony and held that was permissible. Along similar lines, it ruled in this case that the waiver could be eliminated retroactively, that is, that it could be made unavailable to someone who relied on its availability in deciding to plead guilty to a lesser offence.**

**Because there was no evidence taken on whether Richards had indeed actually relied on the possibility of a waiver when he pled guilty, the court remanded the case for a hearing on this issue.**

**The opinion is available online at <http://laws.findlaw.com/9th/9956530.html>.**

**\*\*\*\*\***

### **Gafoor v. INS, Ninth Circuit**

**In this case, the court reversed the decision of the Board of Immigration Appeals denying asylum.**

**Abdul Gafoor, an ethnic Indian from Fiji, sought asylum in the US. In 1987, the government of Fiji, which at the time was dominated by ethnic Indians, was overthrown by ethnic Fijians. A government was set up that ensured that Indo-Fijians would not possess political power. There was also widespread discrimination and violence against Indo-Fijians. At the time of the coup, Gafoor was a policeman, one of the few Indo-Fijians on the force. In 1987, while on patrol, he discovered a man raping a 13-year-old girl. Gafoor arrested him, but was told by his supervisor to release the man because he was a high-ranking army officer. The man was released, and the supervisor told Gafoor that his life was now in danger.**

**The next night, the army officer came to Gafoor's house with a group of men and beat him in front of his wife and children. They took him into custody for a week, where he was again beaten, and told not to tell anyone**

what happened, either about the beating or the rape he witnessed. Several days after he was released, he was again approached by the army officer and a group of men, who beat him and told him he should go back to India. Gafoor and his family then fled Fiji and spent the next three years in Canada. In 1991 he entered the US, and in 1993 the INS began deportation proceedings. Gafoor then filed an application for asylum. The Immigration Judge denied the application, finding that the attacks against him were motivated not by his ethnicity, but by revenge for his actions against the army officer. Gafoor appealed to the Board of Immigration Appeals, which upheld the denial. Gafoor then filed an appeal with the Ninth Circuit.

The BIA did find that Gafoor suffered persecution, a finding with which the Ninth Circuit agreed. The issue for the Ninth Circuit was whether this persecution was on the basis of Gafoor's Indian ethnicity. Ninth Circuit precedent allows for persecution based on mixed motives, such as, for example, a person's political opinion and extortion. The court found that while BIA decisions are given great deference, its decision in this case was not supported by substantial evidence.

During his beatings he was accused of not supporting the army, and was told to go back to India. If this testimony is accepted as true, as it was by the Immigration Judge and the BIA, it is evidence that he was persecuted on the basis of his ethnicity and a political opinion imputed to him by his attackers.

The Ninth Circuit found that the arrest of the army officer was undoubtedly part of the reason for Gafoor's attacks. However, the ethnic slurs levied at Gafoor during the beatings made clear that his ethnic background at least in part motivated the attacks. This becomes even clearer in light of the situation in Fiji, where discrimination against and persecution of Indo-Fijians was widespread.

The BIA had also ruled that because of changed country conditions, Gafoor no longer faced a threat of persecution in Fiji, based on the State Department country condition report for 1992. Since then conditions in Fiji have changed dramatically. Before this year, ethnic tensions had been subsiding. Early this year, however, the government was again overthrown and violence against Indo-Fijians began anew.

Therefore, the court remanded to the BIA for a new determination of whether Gafoor would face persecution if made to return to Fiji.

The text of the opinion is available online at <http://laws.findlaw.com/9th/9871201.html>.

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## 10. GOVERNMENT PROCESSING TIMES

# Nebraska Service Center Processing Times

Jurisdiction: Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

The following is the Nebraska Service Center Processing Time Report for the period ending October 31, 2000:

Application/Petition Type	Date of Cases Pending Initial Adjudication	Range of Total Processing Times by Days	
		From	To
I-90 Replacement Card	08/28/00	60	90
I-90-A SAW	07/31/00	60	90
I-102 Replacement of Arrival Document	08/18/00	60	90
I-129	09/01/00	45	60
I-130 Immediate Relative	06/16/00	140	170
I-130 other	04/09/99	570	600
I-131 Advanced Parole	09/30/00	45	60
I-131 Reentry Permit	06/26/00	120	150
I-131 Ref. Travel Doc.	10/02/00	30	60
I-140 Immigrant Worker	09/29/00	60	75
I-360 Pet. for Widow/Spec. Imm.	09/08/00	60	90

<b>I-485</b>	<b>08/15/99</b>	<b>450</b>	<b>465</b>
<b>I-485 Asylee</b>	<b>06/02/98</b>	<b>840</b>	<b>900</b>
<b>I-485 Refugee</b>	<b>06/04/99</b>	<b>530</b>	<b>560</b>
<b>I-485 HRIFA</b>	<b>06/30/99</b>	<b>470</b>	<b>500</b>
<b>I-539 Change/Extend NI Status -</b>	<b>09/18/00</b>	<b>60</b>	<b>90</b>
<b>I-724 All Waivers</b>	<b>10/05/00</b>	<b>60</b>	<b>90</b>
<b>I-730 Refugee/Asylee Relative Petition</b>	<b>06/05/00</b>	<b>150</b>	<b>180</b>
<b>I-751 Remove Conditions</b>	<b>05/30/00</b>	<b>150</b>	<b>180</b>
<b>I-765 (c)(8) Initial</b>	<b>10/30/00</b>	<b>7</b>	<b>25</b>
<b>I-765 Employment Authorization-Other</b>	<b>09/22/00</b>	<b>45</b>	<b>60</b>
<b>I-817 Family Unity</b>	<b>08/21/00</b>	<b>80</b>	<b>110</b>
<b>I-821 TPS</b>	<b>08/08/00</b>	<b>80</b>	<b>110</b>
<b>I-824 Actions on Approved Petitions</b>	<b>02/01/00</b>	<b>330</b>	<b>360</b>
<b>N-400 Naturalization – Initial Processing</b>	<b>Not adjudicated</b>	<b>370</b>	<b>385</b>

Source: [American Immigration Lawyers Association](#)

**The young woman who's plight prompted the passage of a law making it easier for disabled people to become citizens has become the first person to receive citizenship under the new law. Vijai Rajan, who has cerebral palsy and muscular dystrophy, has spent most of her life in the US, and all off her family are naturalized citizens.**

**\*\*\*\*\***

**The Mexican government has opened a new consulate in Raleigh, North Carolina. It will serve people in both North and South Carolina. It is the first full consulate from any nation in North Carolina.**

**\*\*\*\*\***

**The Charlotte/Douglas International Airport in North Carolina is experiencing tremendous difficulty with its international air passengers because of a lack of INS personnel. Each afternoon, about 900 passengers arrive on international flights, and there are only eight INS inspectors. Two years ago the airport had 11 inspectors and only one-quarter the international passengers. The result is that people wait in line for up to two hours. The airport authorities, along with North Carolina congressmen, are pressing the INS to provide more inspectors.**

**\*\*\*\*\***

**A Wisconsin couple has sued the INS because of delays in their effort to adopt seven children from Liberia. Susan and Leon Glasbrenner went to Liberia in the summer of 1999 as part of a mission. While there they worked to reunite children in orphanages with their families. They decided to adopt seven children whose parents were dead. They adopted the children in Liberia in October 1999. The INS will not issue visas to the children, five boys and two girls, aged 7 to 13, because the state of Wisconsin has not issued a home study report. According to the lawsuit, the state does not have the authority to issue such a report. A lawyer for the Wisconsin Department of Health and Family Services agrees that the state does not have the authority to issue such a report.**

**\*\*\*\*\***

**The Portland INS office has a new director, Joe Olivares, who replaces the embattled Don Beebe. For the past two years he has been an assistant director of the INS office at Seoul, South Korea. Officials at the port of Portland and travelers hope to he will be able to ease tensions with Asian travelers, who felt increasingly discriminated against by INS officers at the Portland airport.**

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**This week the INS extended the designation of Somalia under the Temporary Protected Status Program because of the ongoing armed conflict in many parts of the country. To be eligible for reregistration, a person must either have already registered for TPS benefits or be eligible for late initial registration. The reregistration period runs from November 20, 2000 to December 20, 2000. TPS has been extended through September 17, 2001.**

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**Twenty people have been charged in a marriage fraud scheme in Chicago and are currently on trial. According to prosecutors, Juanita Zamora arranged at least 40 marriages over the past 15 years designed solely to obtain permanent residency. She allegedly had six friends use fake names and obtain marriage licenses in different counties around Chicago. Because counties do not share information, it was easy to avoid recognition. Zamora allegedly received \$1,500 for each marriage she arranged.**

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**The INS has issued an apology for including citizen groups concerned with undocumented immigration on an internal bulletin warning of risks from hate groups. According to the INS statement, the notice “mistakenly implied an affiliation between legitimate organizations concerned about the effects of illegal immigration with anti-immigrant or racial supremacy hate groups.” It explains that the purpose of the bulletin was to alert field offices that the hate groups might take advantage of the gathering of the citizen groups to cause trouble. However, the apology has not satisfied members of some of the groups involved.**

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**A migrant worker from Mexico has won a case against a farm in North Carolina for violations of safety and health regulations. His complaint, filed with the state Labor Department Division of Occupational Safety and Health Division, resulted in fines of \$2,000 against Double H Farms, Inc. A local group that assists farmers in recruiting workers has also expelled him. It is rare that farm workers complain about conditions. Over the past three years, only 19 complaints have been filed.**

**Last week we covered traditional labor certifications and their requirements. This week we address other types of labor certifications.**

## **REDUCTION IN RECRUITMENT**

**If the employer has made attempts to recruit for the position prior to filing the labor certification application, Department of Labor regulations will in some cases allow the employer to request a reduction in the ordinary recruitment process.**

**These attempts must have been made within the six months before filing the labor certification, and must have been sufficient to adequately test the labor market. When submitting the request for a reduction in recruitment, the employer should include documentary evidence of their recruitment efforts, including a copy of at least one advertisement. If recruitment was attempted through an employment agency, union, school, etc., evidence of these attempts should be included. The employer should include a list of all the responses to the recruitment, as well as the reasons why none of the applicants were hired.**

**The SESA will forward this information to the regional Department of Labor office for a determination on the request for reduction in recruitment. If the request is granted and the application is otherwise in order, it may be approved at this point. While this makes reduction in recruitment a very attractive option, employers should be aware that there are some risks involved. For example, recruiting before submission of the application will create a later priority date, resulting in a longer wait for permanent residency. Also, unless the employer obtains accurate information on the prevailing wage, they may not be paying a high enough wage, thus causing a denial of the application.**

## **SPECIAL HANDLING LABOR CERTIFICATIONS**

**This type of labor certification is used for professors and teachers and colleges and universities, and for aliens of exceptional ability in the performing arts. It differs from ordinary labor certifications in that the alien worker is shown to be more qualified than any US worker who applied for the position. The process for teachers and performing artists is by and large the same, although there are some important differences.**

**For college and university teachers, the school must conduct a competitive recruitment for the position offered to the alien. The school demonstrates that it meets this requirement by submitting the following to the Department of Labor:**

- A statement from the employer, signed by a hiring official, outlining the recruitment procedure, the number of applicants for the position, the specific reason the alien was better qualified than each applicant, and the final report of the selection committee of the school;
- A copy of at least one advertisement for the position run in a national professional journal;
- Evidence of other recruitment;
- A statement of the alien's educational and professional qualifications and achievements.

The labor certification must be filed within 18 months after recruitment for the position begins.

A special handling labor certification for an alien with exceptional ability in the performing arts must demonstrate both recruitment efforts and that the alien possesses exceptional ability. This is shown by submission of the following:

- A copy of at least one advertisement for the position placed in a suitable national publication, along with a detailed report on the results;
- Evidence that unions traditionally used for recruiting in the performing arts were contacted and unable to provide any worker as qualified as the alien;
- Evidence of the alien's exceptional ability, such as published material about him or her, playbills, the reputation of organizations that previously employed the alien, the alien's ability to command a high salary, etc.

## **SCHEDULE A LABOR CERTIFICATIONS**

The Department of Labor has determined that there are some job occupations in which there is a chronic shortage of workers. It has "precertified" a list of specific jobs in which an individual labor certification is not required. There are two groups within the Schedule A classification.

Group I consists of professional nurses and physical therapists. Physical therapists must be fully qualified to take the state physical therapist licensing examination in the state in which they intend to work. Nurses must have passed the Commission on Graduates of Foreign Nursing Schools Examination or possess an unrestricted license to practice nursing in the state in which they intend to work.

Group II consists of aliens of exceptional ability in the arts and sciences (excluding the performing arts). Professors at colleges and universities are also included in Group II. For qualification in Group II the alien must have

at least one year of experience in the field, including the year immediately preceding filing the application.

Unlike standard labor certifications, Schedule A labor certifications are not filed with the Department of Labor. Instead, they are filed directly with the INS along with the petition for an immigrant worker. The INS will adjudicate the Schedule A, making it important to submit evidence necessary to show all requirements for the classification sought. If the INS denies the Schedule A labor certification, it cannot be appealed as can other labor certification denials.

### **Graduates of Foreign Medical Schools**

Graduates of foreign medical schools, other than those in the EB-1 extraordinary ability category, who are not subject to the labor certification requirement, and those in the EB-2 category for whom the labor certification requirement has been waived, can often be classified in Group II of Schedule A.

If the position offered involves hands-on patient care, the alien must show that he has passed Parts I and II of the National Board of Medical Examiners Examination or the Foreign Medical Graduates Examination in Medical Science. He must also possess an unrestricted license to practice medicine in a US state.

If the position does not involve patient care, the Schedule A labor certification does not require the alien physician to have passed any exam or possess a license to practice medicine in the US. However, INS regulations require graduates of foreign medical schools to pass these exams to work as any type of a medical professional. Because the Schedule A is submitted directly to the INS along with the immigrant petition, the exam must be taken before then.

### **SCHEDULE B NONCERTIFICATIONS**

These are occupations in which the Department of Labor will not issue a labor certification. The Department has predetermined that there are a sufficient number of able, willing, qualified and available US workers for such positions, and that allowing foreign nationals to take such positions will adversely affect working conditions of US workers similarly situated.

As a general rule the occupations listed on Schedule B are unskilled and require little or no training or education. There is generally high turnover, low wages, long hours and poor working conditions in the listed occupations.

In some situations a waiver can be obtained if the employer can show the Department of Labor that there is in fact no available US worker. These waivers are difficult to obtain and are rarely given.

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### **13. MEDIA DENIED ACCESS TO ASYLUM HEARING FOR BAHRAINI PRINCESS**

This week a federal judge ruled that the asylum hearing for a Bahraini princess can go forward without giving the media access to the proceedings. Two newspapers and two TV stations had sought access to the hearing for Meriam Al-Khalifa, who entered the US using fraudulent documents. She is seeking asylum on the ground that if returned to Bahrain, she will face persecution for marrying a non-Muslim. She is a member of the Bahraini royal family.

Al-Khalifa met her US citizen husband when he was stationed in Bahrain with the US Marine Corp. He supplied her with the forged documents she used when she entered the US. For this, he was dropped in rank. Since then, he has been discharged at his request.

Attorneys for Al-Khalifa are pleased with the judge's decision. They say that there are security issues involved in the case, and worry that too much exposure could result in harm to Al-Khalifa. The media organizations have not yet decided whether to appeal the decision.